

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

)
)
) MDL No. 1456

THIS DOCUMENT RELATES TO
01-CV-12257-PBS, 01-CV-339 AND
1:03-CV-11226-PBS

) Civil Action No. 01-CV-12257 PBS
)
) Judge Patti B. Saris
) Chief Magistrate Judge Marianne B. Bowler

**TRACK 1 DEFENDANTS' MOTION TO PRECLUDE THE EXPERT TESTIMONY OF
DR. RAYMOND HARTMAN IN CONNECTION WITH CLASS 3 OR, IN THE
ALTERNATIVE, FOR A DAUBERT HEARING**

Pursuant to Federal Rule of Evidence 702, Local Rule 26.4(a) and Case Management Order ("CMO") No. 20, the Track 1 Defendants hereby move this Court to preclude the testimony of Plaintiffs' expert witness, Dr. Raymond Hartman, in connection with Class 3 claims pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The grounds for this motion are set forth in the Track 1 Defendants' Memorandum in Support of Their Motion to Preclude the Expert Testimony of Dr. Raymond Hartman in Connection with Class 3, the Declaration of Steven M. Edwards in Support of Track 1 Defendants' Memorandum in Support of Their Motion to Preclude the Expert Testimony of Dr. Raymond Hartman in Connection with Classes 1 and 2 ("Edwards Declaration") dated June 15, 2006, and the Declaration of Steven M. Edwards in Support of Track 1 Defendants' Memorandum in Support of Their Motion to Preclude the Expert Testimony of Dr. Raymond Hartman in Connection with Class 3 ("Supplemental Edwards Declaration") dated July 14, 2006.

The Track 1 Defendants are making this motion because Plaintiffs will undoubtedly call Dr. Hartman as an expert witness in connection with the trial on the claims of third-party payors under Mass. Gen. Laws ch. 93A— which is scheduled to commence in November 2006 pursuant to CMO No. 26— and are likely to call Dr. Hartman as an expert witness on certain issues in later trials in these class actions.

WHEREFORE, for the reasons set forth in the Memorandum, the Edwards Declaration and the Supplemental Edwards Declaration described above, the Track 1 Defendants respectfully request that the Court grant the Track 1 Defendants' motion and enter an order:

- a. precluding the expert testimony of Dr. Raymond Hartman with respect to Class 3; or, in the alternative,
- b. scheduling a *Daubert* hearing, and
- c. providing such other and further relief as the Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d) the undersigned counsel hereby requests oral argument on this motion.

Dated: Boston, Massachusetts
July 14, 2006

Respectfully Submitted,

By: /s/ Jacob T. Elberg
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CERTIFICATE OF SERVICE

I certify that on July 14, 2006 a true and correct copy of the forgoing document was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Jacob T. Elberg
Jacob T. Elberg